

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7123

DATE COMPLAINT FILED: August 11, 2016

DATE OF NOTIFICATIONS: August 16, 2016

RESPONSE RECEIVED: January 13, 2017

DATE ACTIVATED: February 27, 2017

EARLIEST SOL: July 28, 2021

LATEST SOL: August 2, 2021

ELECTION CYCLE: 2016

COMPLAINANT:

Washington State Republican Party

RESPONDENT:

Jay Inslee for Washington

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(18), (20), (22)

52 U.S.C. § 30125(f)

11 C.F.R. § 100.17

11 C.F.R. § 100.24(b)

11 C.F.R. § 300.2(g)

11 C.F.R. § 300.36

11 C.F.R. § 300.71

INTERNAL REPORTS CHECKED:

None

AGENCIES CHECKED:

Washington Public Disclosure Commission

I. INTRODUCTION

The Complaint in this matter alleges that Jay Inslee for Washington (the "Committee"), a non-federal Washington State candidate committee, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by disbursing non-federal funds on a 30-second television advertisement attacking or opposing then-presidential candidate Donald J. Trump. Based on the available information, which we describe in detail below, we recommend that the Commission dismiss as a matter of prosecutorial discretion the allegation that the Committee violated 52 U.S.C. § 30125(f)(1) by spending soft money on the advertisement, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), and close the file.

II. FACTUAL BACKGROUND

In 2016, Jay Inslee served as the Governor of the State of Washington and was running for re-election. Inslee's gubernatorial campaign committee disbursed funds to air a 30-second television advertisement entitled "Team" that supported Inslee's election over opponent Bill Bryant.¹ The advertisement reportedly began airing in the Seattle/Tacoma television market on August 2, 2016.² Based on the Committee's state disclosure reports, it appears that the Committee spent a maximum of \$163,288.90 on producing and airing the advertisement.³ The following chart contains the narration of the advertisement and the second at which each frame began and ended:

| Narration | Seconds |
|--|---------|
| Paid for by Jay Inslee for Washington, Democrat. | 0-3 |
| False attacks against Jay Inslee from Bill Bryant and Republicans. | 4-8 |
| The truth? Jay Inslee successfully pushed for reforms to mental health care and strengthened security measures at state hospitals. | 9-16 |
| Jay Inslee's endorsed by sheriffs, police, and state troopers across Washington. | 17-22 |
| And who's on Republican Bill Bryant's team? | 23-25 |
| We all know who Bill Bryant's supporting for President. | 26-30 |

In the final five-second frame, an image of Trump appeared on the screen beside an image of Bryant.⁴ Text on the screen stated: "Bill Bryant and Donald Trump Wrong for Washington."⁵

¹ Jay Inslee for Washington, "Team," YOUTUBE, <https://www.youtube.com/watch?v=SSsHNXJXJV4> (posted July 29, 2016) ("Team"); *see also* Compl. ¶ 4 (Aug. 11, 2016); Resp. at 1 (Jan. 13, 2017).

² Compl. ¶ 3.

³ The Inslee Committee disclosed a \$150,000 disbursement on July 28, 2016, for the purpose of "TV advertising," and five smaller disbursements on August 2, 2016, for the purpose of "TV production." *Expenditures for: Inslee Jay R*, PUB. DISCLOSURE COMM'N, <http://web.pdc.wa.gov/MvcQuerySystem/CandidateData/expenditures?param=SU5TTEogIDExMA%3D%3D%3D%3D&year=2016&type=statewide> (last visited Nov. 6, 2017). There were gaps in the Committee's television-related spending before and after this timeframe, allowing us to conclude that the disbursements for the advertisement at issue were likely contained within this amount. *See id.*

⁴ Team, *supra* note 1.

⁵ *Id.*

1 The Complaint alleges that the Committee violated 52 U.S.C. § 30125(f)(1) by spending
2 non-federal funds on this advertisement because it was a public communication that attacked or
3 opposed Trump, a clearly identified candidate for federal office.⁶ The Committee responds that
4 the advertisement did not attack or oppose Trump.⁷ According to the Committee, the
5 advertisement was directed at defeating Bryant, and Trump appeared in the advertisement only to
6 associate Bryant with Trump.⁸ The Committee argues that, “[i]n its context, the ‘Wrong for
7 Washington’ chyron conveyed that Mr. Bryant and Mr. Trump’s mutual embrace was reason to
8 vote against Mr. Bryant.”⁹

9 The Committee also argues that section 30125(f)(1)’s legislative history and Commission
10 precedent establish that non-federal committees may use soft money to pay for advertisements
11 that show that a non-federal candidate identifies with the positions of a federal candidate,
12 because such advertisements do not actually support or oppose the federal candidate.¹⁰ The
13 Committee then asserts separately that, even if its advertisement opposed Trump, it had enough
14 federally permissible funds in its account to pay for the advertisement without using soft
15 money.¹¹

⁶ Compl. ¶¶ 1-2, 8-14.

⁷ Resp. at 2.

⁸ *Id.* at 2-3.

⁹ *Id.* The Committee contends that the “brevity” of the advertisement’s “reference to Mr. Trump” helps clarify the advertisement’s singular purpose of electing Inslee and further supports a no-reason-to-believe finding. *See id.* at 3.

¹⁰ *Id.* at 2 & 3 n.11 (citing Advisory Op. 2003-25 (Weinzapfel) (“AO 2003-25”), MUR 6113 (Hollingsworth), and MUR 6019 (Caserta)).

¹¹ *Id.* at 3.

III. LEGAL ANALYSIS

The Act prohibits a candidate for state or local office, a state or local officeholder, or the agent of a state or local candidate or officeholder from spending funds on public communications that refer to a clearly identified candidate for federal office and that promote, attack, support, or oppose ("PASO") a candidate for that office, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.¹² The Act and regulations specify that a communication may PASO a candidate regardless of whether the communication expressly advocates a vote for or against a candidate,¹³ but do not otherwise define the terms promote, support, attack, or oppose.¹⁴ The Supreme Court has stated that the PASO terms themselves "clearly set forth the confines within which potential party speakers must act in order to avoid triggering the provision," and they "provide explicit standards for those who apply them and give the person of ordinary intelligence a reasonable opportunity to know what is prohibited."¹⁵

¹² 52 U.S.C. § 30125(f)(1), *cross-referencing id.* § 30101(20)(A)(iii) (including PASO communications in the definition of "federal election activity" ("FEA")); *see also* 11 C.F.R. §§ 100.24(b)(3), 300.71 (requiring federal funds for PASO communications). Public communications are not FEA, however, and thus are not included within the restrictions of section 30125(f)(1), if they are in connection with an election for state or local office and refer only to the candidates for such state or local office, and do not PASO any candidate for federal office. 52 U.S.C. § 30125(f)(2); 11 C.F.R. § 300.72. Because the advertisement here refers to Trump, not just the candidates for governor, this exception to the FEA definition does not apply.

¹³ 52 U.S.C. § 30101(20)(A)(iii); 11 C.F.R. § 100.24(b)(3).

¹⁴ The Commission has twice proposed but not adopted definitions for PASO. *See* Prohibited and Excessive Contributions, 67 Fed. Reg. 35,654, 35,681 (May 20, 2002) (Notice of Proposed Rulemaking); Coordination, 74 Fed. Reg. 53,893, 53,898-900 (Oct. 21, 2009) (Notice of Proposed Rulemaking).

¹⁵ *McConnell v. FEC*, 540 U.S. 93, 170 n.64 (2003). As the Respondent contends, *see* Resp. at 2, the legislative history of section 30125(f) shows that the provision was meant to allow "spending non-Federal money to run advertisements that mention that [state candidates] have been endorsed by a Federal candidate or say that they identify with a position of a named Federal candidate," *but only* "so long as those advertisements do not support, attack, promote or oppose a Federal candidate." *See* 148 Cong. Rec. S2143 (daily ed. Mar. 20, 2002) (Feingold).

1 The Committee's advertisement was a public communication¹⁶ that referenced a clearly
2 identified federal candidate, Trump, by name and photograph.¹⁷ While a communication that
3 merely identifies a federal candidate by name and photograph does not PASO that candidate,¹⁸
4 the Committee's advertisement went beyond mere identification of Trump, stating that Bryant
5 was "supporting" Trump "for President" and then immediately displaying the closing tagline,
6 "Bill Bryant and Donald Trump Wrong for Washington," with a picture of Trump. This
7 combination of words and image does not merely link Trump to Bryant in order to attack Bryant;
8 it attacks and opposes Trump.¹⁹ Therefore, the advertisement PASOs a federal candidate.²⁰

9 Because the advertisement is a PASO communication, the Committee was required to
10 pay for it with federal funds.²¹ Consistent with Washington state law, the Committee appears to
11 have accepted funds from federally-prohibited sources and in sums that exceed the Act's amount

¹⁶ The term "public communication" is defined as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 52 U.S.C. § 30101(22). As a television advertisement, the advertisement in this matter falls within this definition.

¹⁷ See *id.* § 30101(18); 11 C.F.R. § 100.17; Advisory Op. 2009-26 (Coulson) at 7 ("AO 2009-26") ("The postcard clearly identifies a Federal candidate because it identifies Representative Coulson by name and includes her photograph.").

¹⁸ See AO 2009-26 at 7.

¹⁹ By calling Trump "Wrong for Washington" immediately after referencing his candidacy for President, "Team" goes beyond the types of communications that the Commission has stated are clearly not PASO. See *id.* (stating that the mere identification of a federal candidate is not PASO); AO 2003-25 at 3-5 (determining that a communication showing that a federal candidate endorses a state candidate does not PASO the federal candidate); *cf.* Factual & Legal Analysis ("F&LA") at 3, 6, MUR 6684 (Gregg for Indiana) (finding, after observing that the communication at issue presented federal candidate Richard Mourdock's statements without commentary and included a closing tagline that omitted any reference to Mourdock, that while "the advertisement could be interpreted as opposing Mourdock under the PASO standard, the ad focuses on the Indiana gubernatorial election and does not exhort viewers to vote against Mourdock," such that the alleged section 30125(f)(1) violation should be dismissed).

²⁰ See 52 U.S.C. § 30125(f)(1); 11 C.F.R. § 300.71.

²¹ See 11 C.F.R. § 300.71 (requiring federal funds for PASO communications); see also *id.* § 300.2(g) (defining "federal funds" as those that "comply with the limitations, prohibitions, and reporting requirements of the Act").

1 limitations.²² Our inquiry then, is whether the Committee spent any of these prohibited or
2 excessive funds on the PASO advertisement, and whether the Committee complied with any
3 applicable federal reporting requirements with regard to the funds used for the advertisement.²³

4 In analyzing other federal-funds restrictions in section 30125, the Commission has
5 allowed a state committee to use a "reasonable accounting method" to separate permissible from
6 impermissible funds in order to determine whether federally permissible funds were used to
7 make a particular disbursement.²⁴ The Committee here does not address whether it used a
8 reasonable accounting method; it states only that publicly filed reports "show[] that it received
9 ample funds [] from federally-permissible sources and in federally-permissible amounts with
10 which to pay for the ad"²⁵ Our review of the Committee's state disclosure reports confirms the
11 Committee's assessment that it appears to have had sufficient funds subject to the limitations and

²² See *Jay Inslee, 2016*, PUB. DISCLOSURE COMM'N, https://www.pdc.wa.gov/browse/campaign-explorer/candidate?filer_id=INSLJ%20%20110&election_year=2016 (last visited Nov. 6, 2017) ("Jay Inslee, 2016 Database") (showing on the downloadable list of contributions, for example, contributions received from "Centene Corporation" on July 18, 2016, and from "UFCW Local 367" on July 28, 2016, and a \$290,000 contribution from the Washington State Democratic Central Committee on July 28, 2016); *2016-17 Contribution Limits*, PUB. DISCLOSURE COMM'N, Jan. 29, 2016, https://www.pdc.wa.gov/sites/default/files/campaign-contribution-limits/LimitsChart_0.pdf ("Washington Contribution Chart") (summarizing who may make contributions and stating the contribution limits for each contributor category); see also 52 U.S.C. § 30118(a) (prohibiting corporate and labor organization contributions to federal candidates and committees); *Contribution Limits*, FEC, <https://transition.fec.gov/info/contriblimitschart1718.pdf> (last visited Nov. 6, 2017) (stating that a state party committee may contribute up to \$5,000 to a candidate committee).

²³ See 52 U.S.C. § 30125(f)(1); 11 C.F.R. § 300.71.

²⁴ Advisory Op. 2006-38 (Casey State Committee) at 3-4; Advisory Op. 2007-26 (Schock) at 3, 5; see also 11 C.F.R. § 110.3(c)(4) (providing a basis for the Commission's just-cited advisory opinions by stating that committees may transfer funds in certain situations when they can demonstrate that their "cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred"). These advisory opinions concern the federal-funds restrictions at 52 U.S.C. § 30125(e)(1)(B), which apply to certain activities by federal candidates (and federal candidates' state committees) in non-federal elections.

²⁵ Resp. at 3.

1 prohibitions of the Act on hand to pay for the advertisement.²⁶ However, those funds were not
2 subject to the reporting requirements of the Act, and thus do not constitute federal funds.²⁷

3 The Commission, though, has never found a 52 U.S.C. § 30125(f)(1) violation based
4 solely on the fact that the funds a committee used to pay for a PASO communication were not
5 subject to the Act's reporting requirements.²⁸ Given the Commission's precedent, and because
6 the Committee appears to have had enough funds that complied with the limitations and
7 prohibitions of the Act to fund the advertisement, we recommend that the Commission dismiss
8 the alleged 52 U.S.C. § 30125(f)(1) violation against the Committee as a matter of prosecutorial
9 discretion under *Heckler v. Chaney* and close the file.²⁹

²⁶ From July 1, 2016, through August 2, 2016—the latest date the Committee appears to have made disbursements for airing the advertisement that cost, at most, \$163,288.90—the Committee raised a total of \$843,214.72, of which \$441,814.72 was from individual donors, who are permissible sources under the Act. See Jay Inslee, 2016 Database, *supra* note 22 (providing downloadable contribution data, which labels each contribution by date and type of contributor); see also 52 U.S.C. § 30116(a)(1). Moreover, because Washington's \$2,000 individual contribution limit is lower than the Act's individual contribution limit, all of these reported contributions appear to be within the amount limitations of the Act. Compare Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750, 5,752 (Feb. 3, 2015) (providing that the individual contribution limit for the 2015-2016 election cycle was \$2,700 per election), with Washington Contribution Chart, *supra* note 22. Thus, the Committee appears to have had over \$163,288.90 of funds subject to the limitations and prohibitions of the Act on hand when it made the relevant disbursements.

²⁷ See 11 C.F.R. § 300.2(g); F&LA at 5, MUR 6019 (Caserta) (concluding that funds not subject to the reporting requirements of the Act are not federal funds under 11 C.F.R. § 300.71, but dismissing the alleged 52 U.S.C. § 30125(f)(1) violation as a matter of prosecutorial discretion because of the minimal amount used for the PASO communication).

²⁸ See F&LA at 5, MUR 6019 (Caserta); Statement of Reasons, Comm'rs Toner, Mason & von Spakovsky at 5-6, MUR 5604 (Friends of William D. Mason) ("The requirement that a state or local candidate or officeholder pay for Type 3 FEA with money subject to FECA limits, prohibitions, and reporting requirements does not establish a reporting requirement that would not otherwise exist. In other words, if, for example, FECA does not otherwise require a state or local candidate or officeholder to report, then the candidate or officeholder need not do anything to comply with the 'reporting requirement' language of Section 441i(f)(1)." (internal citations omitted)).

²⁹ 470 U.S. 821.

IV. RECOMMENDATIONS

1. Dismiss the allegation that Jay Inslee for Washington violated 52 U.S.C. § 30125(f)(1);
2. Approve the attached Factual and Legal Analysis; and
3. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

11/6/17
Date

Kathleen M. Guith
Kathleen M. Guith
Associate General Counsel for Enforcement

Lynn Y. Tran
Lynn Y. Tran
Assistant General Counsel

Shanna M. Reulbach
Shanna M. Reulbach
Attorney

Attachment
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Jay Inslee for Washington

MUR: 7123

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") by the Washington State Republican Party. The Complaint alleges that Jay Inslee for Washington (the "Committee"), a non-federal Washington State candidate committee, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by disbursing non-federal funds on a 30-second television advertisement attacking or opposing then-presidential candidate Donald J. Trump. Based on the available information, described in detail below, the Commission dismisses as a matter of prosecutorial discretion the allegation that the Committee violated 52 U.S.C. § 30125(f)(1) by spending soft money on the advertisement, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), and closes the file.

II. FACTUAL BACKGROUND

In 2016, Jay Inslee served as the Governor of the State of Washington and was running for re-election. Inslee's gubernatorial campaign committee disbursed funds to air a 30-second television advertisement entitled "Team" that supported Inslee's election over opponent Bill Bryant.¹ The advertisement reportedly began airing in the Seattle/Tacoma television market on August 2, 2016.² Based on the Committee's state disclosure reports, it appears that the Committee spent a maximum of \$163,288.90 on producing and airing the advertisement.³ The

¹ Jay Inslee for Washington, "Team," YOUTUBE, <https://www.youtube.com/watch?v=SSsHNXJXJV4> (posted July 29, 2016) ("Team"); see also Compl. ¶ 4 (Aug. 11, 2016); Resp. at 1 (Jan. 13, 2017).

² Compl. ¶ 3.

- 1 following chart contains the narration of the advertisement and the second at which each frame
 2 began and ended:

| Narration | Seconds |
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| Paid for by Jay Inslee for Washington, Democrat. | 0-3 |
| False attacks against Jay Inslee from Bill Bryant and Republicans. | 4-8 |
| The truth? Jay Inslee successfully pushed for reforms to mental health care and strengthened security measures at state hospitals. | 9-16 |
| Jay Inslee's endorsed by sheriffs, police, and state troopers across Washington. | 17-22 |
| And who's on Republican Bill Bryant's team? | 23-25 |
| We all know who Bill Bryant's supporting for President. | 26-30 |

- 3 In the final five-second frame, an image of Trump appeared on the screen beside an image of
 4 Bryant.⁴ Text on the screen stated: "Bill Bryant and Donald Trump Wrong for Washington."⁵

- 5 The Complaint alleges that the Committee violated 52 U.S.C. § 30125(f)(1) by spending
 6 non-federal funds on this advertisement because it was a public communication that attacked or
 7 opposed Trump, a clearly identified candidate for federal office.⁶ The Committee responds that
 8 the advertisement did not attack or oppose Trump.⁷ According to the Committee, the
 9 advertisement was directed at defeating Bryant, and Trump appeared in the advertisement only to
 10 associate Bryant with Trump.⁸ The Committee argues that, "[i]n its context, the 'Wrong for

³ The Inslee Committee disclosed a \$150,000 disbursement on July 28, 2016, for the purpose of "TV advertising," and five smaller disbursements on August 2, 2016, for the purpose of "TV production." *Expenditures for: Inslee Jay R*, PUB. DISCLOSURE COMM'N, <http://web.pdc.wa.gov/MvcQuerySystem/CandidateData/expenditures?param=SU5TTEogIDExMA%3D%3D%3D%3D&year=2016&type=statewide> (last visited Nov. 6, 2017). There were gaps in the Committee's television-related spending before and after this timeframe, allowing us to conclude that the disbursements for the advertisement at issue were likely contained within this amount. *See id.*

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Washington's chyron conveyed that Mr. Bryant and Mr. Trump's mutual embrace was reason to vote against Mr. Bryant."⁹

The Committee also argues that section 30125(f)(1)'s legislative history and Commission precedent establish that non-federal committees may use soft money to pay for advertisements that show that a non-federal candidate identifies with the positions of a federal candidate, because such advertisements do not actually support or oppose the federal candidate.¹⁰ The Committee then asserts separately that, even if its advertisement opposed Trump, it had enough federally permissible funds in its account to pay for the advertisement without using soft money.¹¹

III. LEGAL ANALYSIS

The Act prohibits a candidate for state or local office, a state or local officeholder, or the agent of a state or local candidate or officeholder from spending funds on public communications that refer to a clearly identified candidate for federal office and that promote, attack, support, or oppose ("PASO") a candidate for that office, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.¹² The Act and regulations specify that a

⁹ *Id.* The Committee contends that the "brevity" of the advertisement's "reference to Mr. Trump" helps clarify the advertisement's singular purpose of electing Inslee and further supports a no-reason-to-believe finding. *See id.* at 3.

¹⁰ *Id.* at 2 & 3 n.11 (citing Advisory Op. 2003-25 (Weinzapfel) ("AO 2003-25"), MUR 6113 (Hollingsworth), and MUR 6019 (Caserta)).

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2 advocates a vote for or against a candidate,¹³ but do not otherwise define the terms promote,
3 support, attack, or oppose.¹⁴ The Supreme Court has stated that the PASO terms themselves
4 “clearly set forth the confines within which potential party speakers must act in order to avoid
5 triggering the provision,” and they “provide explicit standards for those who apply them and give
6 the person of ordinary intelligence a reasonable opportunity to know what is prohibited.”¹⁵

7 The Committee’s advertisement was a public communication¹⁶ that referenced a clearly
8 identified federal candidate, Trump, by name and photograph.¹⁷ While a communication that
9 merely identifies a federal candidate by name and photograph does not PASO that candidate,¹⁸
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¹⁵ *McConnell v. FEC*, 540 U.S. 93, 170 n.64 (2003). As the Respondent contends, *see* Resp. at 2, the legislative history of section 30125(f) shows that the provision was meant to allow “spending non-Federal money to run advertisements that mention that [state candidates] have been endorsed by a Federal candidate or say that they identify with a position of a named Federal candidate,” *but only* “so long as those advertisements do not support, attack, promote or oppose a Federal candidate.” *See* 148 Cong. Rec. S2143 (daily ed. Mar. 20, 2002) (Feingold).

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1 combination of words and image does not merely link Trump to Bryant in order to attack Bryant;
2 it attacks and opposes Trump.¹⁹ Therefore, the advertisement PASOs a federal candidate.²⁰

3 Because the advertisement is a PASO communication, the Committee was required to
4 pay for it with federal funds.²¹ Consistent with Washington state law, the Committee appears to
5 have accepted funds from federally-prohibited sources and in sums that exceed the Act's amount
6 limitations.²² Our inquiry then, is whether the Committee spent any of these prohibited or
7 excessive funds on the PASO advertisement, and whether the Committee complied with any
8 applicable federal reporting requirements with regard to the funds used for the advertisement.²³

9 In analyzing other federal-funds restrictions in section 30125, the Commission has
10 allowed a state committee to use a "reasonable accounting method" to separate permissible from

¹⁹ By calling Trump "Wrong for Washington" immediately after referencing his candidacy for President, "Team" goes beyond the types of communications that the Commission has stated are clearly not PASO. *See id.* (stating that the mere identification of a federal candidate is not PASO); AO 2003-25 at 3-5 (determining that a communication showing that a federal candidate endorses a state candidate does not PASO the federal candidate); *cf.* Factual & Legal Analysis ("F&LA") at 3, 6, MUR 6684 (Gregg for Indiana) (finding, after observing that the communication at issue presented federal candidate Richard Mourdock's statements without commentary and included a closing tagline that omitted any reference to Mourdock, that while "the advertisement could be interpreted as opposing Mourdock under the PASO standard, the ad focuses on the Indiana gubernatorial election and does not exhort viewers to vote against Mourdock," such that the alleged section 30125(f)(1) violation should be dismissed).

²⁰ *See* 52 U.S.C. § 30125(f)(1); 11 C.F.R. § 300.71.

²¹ *See* 11 C.F.R. § 300.71 (requiring federal funds for PASO communications); *see also id.* § 300.2(g) (defining "federal funds" as those that "comply with the limitations, prohibitions, and reporting requirements of the Act").

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1 impermissible funds in order to determine whether federally permissible funds were used to
2 make a particular disbursement.²⁴ The Committee here does not address whether it used a
3 reasonable accounting method; it states only that publicly filed reports “show[] that it received
4 ample funds [] from federally-permissible sources and in federally-permissible amounts with
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6 Committee’s assessment that it appears to have had sufficient funds subject to the limitations and
7 prohibitions of the Act on hand to pay for the advertisement.²⁶ However, those funds were not
8 subject to the reporting requirements of the Act, and thus do not constitute federal funds.²⁷

9 The Commission, though, has never found a 52 U.S.C. § 30125(f)(1) violation based
10 solely on the fact that the funds a committee used to pay for a PASO communication were not

²⁴ Advisory Op. 2006-38 (Casey State Committee) at 3-4; Advisory Op. 2007-26 (Schock) at 3, 5; *see also* 11 C.F.R. § 110.3(c)(4) (providing a basis for the Commission’s just-cited advisory opinions by stating that committees may transfer funds in certain situations when they can demonstrate that their “cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred”). These advisory opinions concern the federal-funds restrictions at 52 U.S.C. § 30125(e)(1)(B), which apply to certain activities by federal candidates (and federal candidates’ state committees) in non-federal elections.

²⁵ Resp. at 3.

²⁶ From July 1, 2016, through August 2, 2016—the latest date the Committee appears to have made disbursements for airing the advertisement that cost, at most, \$163,288.90—the Committee raised a total of \$843,214.72, of which \$441,814.72 was from individual donors, who are permissible sources under the Act. *See* Jay Inslee, 2016 Database, *supra* note 22 (providing downloadable contribution data, which labels each contribution by date and type of contributor); *see also* 52 U.S.C. § 30116(a)(1). Moreover, because Washington’s \$2,000 individual contribution limit is lower than the Act’s individual contribution limit, all of these reported contributions appear to be within the amount limitations of the Act. *Compare* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750, 5,752 (Feb. 3, 2015) (providing that the individual contribution limit for the 2015-2016 election cycle was \$2,700 per election), *with* Washington Contribution Chart, *supra* note 22. Thus, the Committee appears to have had over \$163,288.90 of funds subject to the limitations and prohibitions of the Act on hand when it made the relevant disbursements.

²⁷ *See* 11 C.F.R. § 300.2(g); F&LA at 5, MUR 6019 (Caserta) (concluding that funds not subject to the reporting requirements of the Act are not federal funds under 11 C.F.R. § 300.71, but dismissing the alleged 52 U.S.C. § 30125(f)(1) violation as a matter of prosecutorial discretion because of the minimal amount used for the PASO communication).

1 subject to the Act's reporting requirements.²⁸ Given the Commission's precedent, and because
2 the Committee appears to have had enough funds that complied with the limitations and
3 prohibitions of the Act to fund the advertisement, the Commission dismisses the alleged
4 52 U.S.C. § 30125(f)(1) violation against the Committee as a matter of prosecutorial discretion
5 under *Heckler v. Chaney* and closes the file.²⁹

²⁸ See F&LA at 5, MUR 6019 (Caserta)

²⁹ 470 U.S. 821.